

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 594**

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**Introduced by Committee on Water, Parks and Wildlife (Assembly Members Rendon (Chair), Allen, Bigelow, Blumenfield, Bocanegra, Dahle, Fong, Frazier, Beth Gaines, Gatto, Patterson, and Yamada)**

(Principal coauthor: Senator Hueso)

February 20, 2013

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An act to amend Sections 541.5, 5007, 5010.6, and 5080.42 of the Public Resources Code, relating to state parks.

### LEGISLATIVE COUNSEL'S DIGEST

AB 594, as amended, Committee on Water, Parks and Wildlife. State parks: operating agreements: park closures.

(1) Existing law requires the Department of Parks and Recreation to achieve any required budget reductions by closing, partially closing, and reducing services at selected units of the state park system.

This bill would instead state that it is the intent of the Legislature that the department consistently operate the state park system, as specified. This bill would state that it is the intent of the Legislature, if budget reductions necessitate changes to the continued operation of state park units, that the department achieve any required budget reductions by implementing efficiencies and increasing revenue collection or reducing services and that full park closures only be considered as a last option, as provided. The bill would require, for any park units proposed for

closure on or after July 1, 2014, that the department document and publicly disclose, among other things, the methodology used to evaluate and select the park units proposed for closure.

Existing law requires the department to select park units for closure based on certain factors, including factors related to rate of visitation and proximity to other closed park units.

This bill would require that the rate of visitation be measured not only based on the raw number of visitations to the park unit, but also to the extent to which the total capacity of the park unit is used. The bill would eliminate the factor relating to significant operational efficiencies to be gained from closing a unit based on its proximity to other closed park units. In addition, the bill would add additional factors for consideration, including the extent to which closure of a unit would increase public safety hazards or impair the state's ability to protect iconic natural and historical resources.

The bill would require the State Parks and Recreation Commission to hold a public hearing on any park unit closures that are proposed by the department on or after July 1, 2014.

(2) Existing law prohibits the department from closing or proposing to close a state park in the 2012–2013 or 2013–2014 fiscal year. Existing law authorizes the department to enter into an operating agreement with a qualified nonprofit organization for the purposes of operating the entirety of a park unit, as identified by the director of the department, to the extent the operating agreement would enable the department to avoid closure of a unit or units of the state park system that may otherwise be subject to closure.

This bill would provide that the prohibition to close, or propose to close, a state park in the 2012–13 or 2013–14 fiscal year does not limit or affect the department's authority to enter into an operating agreement during the 2012–13 or 2013–14 fiscal year, for purposes of the operation of the entirety of a state park, as agreed to by the director, during the 2012–13 or 2013–14 fiscal year.

(3) Existing law establishes the State Parks Revenue Incentive Subaccount in the State Parks and Recreation Fund. Existing law continuously appropriates moneys in the account to the department to create incentives for projects that are consistent with the mission of the department and generate revenue, as provided.

This bill would specify that projects referred to above include, but are not limited to, ~~capital~~ *capital* outlay projects.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 541.5 of the Public Resources Code is  
2 amended to read:

3 541.5. (a) The department shall not close, or propose to close,  
4 a state park in the 2012–13 or 2013–14 fiscal year. The commission  
5 and the department shall recommend all necessary steps to establish  
6 a sustainable funding strategy for the department to the Legislature  
7 on or before January 1, 2015.

8 (b) There is hereby appropriated twenty million five hundred  
9 thousand dollars (\$20,500,000) to the department from the State  
10 Parks and Recreation Fund, which shall be available for  
11 encumbrance for the 2012–13 and 2013–14 fiscal years, to be  
12 expended as follows:

13 (1) Ten million dollars (\$10,000,000) shall be available to  
14 provide for matching funds pursuant to subdivision (c).

15 (2) Ten million dollars (\$10,000,000) shall be available for the  
16 department to direct funds to parks that remain at risk of closure  
17 or that will keep parks open during the 2012–13 and 2013–14 fiscal  
18 years. Priority may be given to parks subject to a donor or operating  
19 agreement or other contractual arrangement with the department.

20 (3) Up to five hundred thousand dollars (\$500,000) shall be  
21 available for the department to pay for ongoing audits and  
22 investigations as directed by the Joint Legislative Audit Committee,  
23 the office of the Attorney General, the Department of Finance, or  
24 other state agency.

25 (c) The department shall match on a dollar-for-dollar basis all  
26 financial contributions contributed by a donor pursuant to an  
27 agreement for the 2012–13 fiscal year for which the department  
28 received funds as of July 31, 2013, and for agreements entered  
29 into in the 2013–14 fiscal year. These matching funds shall be  
30 used exclusively in the park unit subject to those agreements.

31 (d) The department shall notify the Joint Legislative Budget  
32 Committee in writing not less than 30 days prior to the expenditure  
33 of funds under this section of the funding that shall be expended,  
34 the manner of the expenditure, and the recipient of the expenditure.

(e) The prohibition to close, or propose to close, a state park in the 2012–13 or 2013–14 fiscal year, pursuant to paragraph (a), does not limit or affect the department’s authority to enter into an operating agreement, pursuant to Section 5080.42, during the 2012–13 or 2013–14 fiscal year, for purposes of the operation of the entirety of a state park during the 2012–13 or 2013–14 fiscal year.

SEC. 2. Section 5007 of the Public Resources Code is amended to read:

5007. (a) It is the intent of the Legislature that the department consistently operate the state park system to preserve public access and provide protection of natural, cultural, and historic resources. If budget reductions necessitate changes to the continued operation of state park units, it is the intent of the Legislature that the department achieve required budget reductions by implementing efficiencies and increasing revenue collection, or reducing services at selected units of the state park system, and that full park closures only be considered as a last option to address required budget reductions after all other feasible alternatives, including, but not limited to, entering into operating agreements with qualified nonprofit entities and local governments have been explored.

(b) For any park unit proposed for closure on or after July 1, 2014, the department shall document and publicly disclose the methodology, rationale, and scoring system used to evaluate and select park units proposed for closure, and shall select any units proposed to be closed based solely on all of the following factors:

(1) The relative statewide significance of each park unit, preserving to the extent possible, parks identified in the department’s documents including “Outstanding and Representative Parks,” the “California State History Plan,” and the “California State Parks Survey of 1928.”

(2) The rate of visitation to each unit, to minimize impacts to visitation in the state park system. Visitation shall be measured not only based on the raw number of visitations to the unit, but also to the extent that the total capacity of the unit is used.

(3) (A) The estimated net savings from closing each unit, to maximize savings to the state park system.

(B) For purposes of this subdivision, “net savings” means the estimated costs of operation for the unit less the unit’s projected revenues and less the costs of maintaining the unit after it is closed.

1 (4) The feasibility of physically closing each unit.

2 (5) The existence of, or potential for, partnerships that can help  
3 support each unit, including public and nonprofit partners and  
4 concessions.

5 (6) Significant and costly infrastructure deficiencies affecting  
6 key systems at each unit so that continued operation of the unit is  
7 less cost effective relative to other units.

8 (7) Recent or funded infrastructure investments at a unit.

9 (8) Necessary but unfunded capital investments at a unit.

10 (9) Deed restrictions and grant requirements applicable to each  
11 unit.

12 (10) The extent to which there are substantial dedicated funds  
13 for the support of the unit that are not appropriated from the  
14 General Fund.

15 (11) The extent to which the closure of a park unit would impact  
16 local and regional economies, or disproportionately impact one  
17 region of the state over another, *based on departmental data,*  
18 *information, and statistics, or existing external data, information,*  
19 *and statistics that are readily available to the department.*

20 (12) The extent to which the closure of a park unit would limit  
21 availability of facilities that are compliant with the Americans with  
22 Disabilities Act of 1990 and subsequent amendments to the act.

23 (13) The extent to which closure of a park unit would impair  
24 firefighter access to water resources or otherwise increase fire risk.

25 (14) The extent to which closure of a park unit would increase  
26 public safety hazards or impair the state's ability to protect iconic  
27 natural and historical resources.

28 (c) The commission shall hold a public hearing on any park unit  
29 closures that are proposed by the department on or after July 1,  
30 2014, and information gathered at the hearing shall be considered  
31 by the department before any final decision regarding the proposed  
32 closure of a park unit.

33 (d) Notwithstanding Division 3.6 (commencing with Section  
34 810) of Title 1 of the Government Code, a public entity or a public  
35 employee is not liable for injury or damage caused by a condition  
36 of public property located in, or injury or damage otherwise  
37 occurring in, or arising out of an activity in, a state park system  
38 unit that is designated as closed by the department pursuant to  
39 subdivision (a), except for conduct that constitutes gross negligence  
40 or is wanton or reckless. This immunity shall apply notwithstanding

1 the fact that the public has access, whether invited or uninvited,  
2 to the state park system unit, and notwithstanding that the  
3 department may take actions such as patrols, inspections,  
4 maintenance, and repairs necessary to protect the state park system  
5 unit facilities and resources from deterioration, damage, or  
6 destruction. This immunity shall apply only to units of the state  
7 park system that are designated as closed pursuant to subdivision  
8 (a) and shall not apply to units that are partially closed or subject  
9 to service reductions but not closure. The closed units shall be  
10 maintained in a list by the department and the list shall be made  
11 publicly available and posted on the department's Internet Web  
12 site. The list shall include the date the unit is considered closed.  
13 The immunity provided by this subdivision does not limit any  
14 other immunity or immunities available to a public entity or a  
15 public employee. The governmental immunity provided in this  
16 section does not apply to a third party or entity that has reopened  
17 a park listed as closed pursuant to subdivision (a). The immunity  
18 shall continue to apply to the state.

19 SEC. 3. Section 5010.6 of the Public Resources Code is  
20 amended to read:

21 5010.6. (a) For purposes of this section, "subaccount" means  
22 the State Parks Revenue Incentive Subaccount created pursuant  
23 to this section.

24 (b) The State Parks Revenue Incentive Subaccount is hereby  
25 created within the State Parks and Recreation Fund and the  
26 Controller shall annually transfer fifteen million three hundred  
27 forty thousand dollars (\$15,340,000) from the State Parks and  
28 Recreation Fund to the subaccount.

29 (c) Notwithstanding Section 13340 of the Government Code,  
30 the funds in the subaccount are hereby continuously appropriated  
31 to the department to create incentives for projects, including, but  
32 not limited to, ~~capital~~ *capital* outlay projects, that are consistent  
33 with the mission of the department and that generate revenue,  
34 except the department shall not expend from the subaccount more  
35 than eleven million dollars (\$11,000,000) annually pursuant to  
36 Section 5003.

37 (d) The Office of State Audits and Evaluations shall review the  
38 activities funded from the subaccount pursuant to subdivision (c)  
39 to ensure appropriate internal controls are in place. The department

1 shall reimburse the Office of State Audits and Evaluations from  
2 the subaccount for any costs related to the review.

3 (e) The revenue generated from projects funded by the  
4 subaccount shall be deposited in the subaccount and are  
5 continuously appropriated for expenditure by the department in  
6 accordance with the following:

7 (1) At least 50 percent of the revenue generated shall be  
8 expended in the district of the department that earned that revenue,  
9 as an incentive for revenue generation.

10 (2) The remaining revenue may be expended by the department  
11 pursuant to subdivision (c), including, but not limited to, for  
12 expenditure pursuant to Section 5003.

13 (f) The funds in the subaccount shall be available for  
14 encumbrance and expenditure until June 30, 2014, and for  
15 liquidation until June 30, 2016.

16 (g) This section shall become inoperative on June 30, 2016,  
17 and, as of January 1, 2017, is repealed, unless a later enacted  
18 statute, that becomes operative on or before January 1, 2017,  
19 deletes or extends the dates on which it becomes inoperative and  
20 is repealed.

21 SEC. 4. Section 5080.42 of the Public Resources Code is  
22 amended to read:

23 5080.42. (a) Notwithstanding any other provision of this  
24 article, the department may enter into an operating agreement with  
25 a qualified nonprofit organization for the development,  
26 improvement, restoration, care, maintenance, administration, or  
27 operation of a unit or units, or portion of a unit, of the state park  
28 system, as agreed to by the director. If the department enters into  
29 an operating agreement that involves the operation of the entirety  
30 of a park unit, that agreement may be entered into pursuant to this  
31 section only to the extent that the agreement would enable the  
32 department to avoid closure of a unit or units of the state park  
33 system that may otherwise be subject to closure. The prohibition  
34 on park closures, pursuant to subdivision (a) of Section 541.5, does  
35 not limit the department's authority to enter into an operating  
36 agreement pursuant to this section, as provided in subdivision (e)  
37 of Section 541.5. The department may only enter into an operating  
38 agreement that involves the operation of the entirety of a park unit  
39 for no more than 20 park units. An operating agreement with a

1 qualified nonprofit organization shall include, but shall not be  
2 limited to, the following conditions:

3 (1) The district superintendent for the department shall provide  
4 liaison with the department, the nonprofit organization, and the  
5 public.

6 (2) The nonprofit organization shall annually submit a written  
7 report to the department regarding its operating activities during  
8 the prior year and shall make copies of the report available to the  
9 public upon request. The report shall be available on the Internet  
10 Web sites of both the department and the nonprofit organization.  
11 The report shall include a full accounting of all revenues and  
12 expenditures for each unit of the state park system that the  
13 nonprofit organization operates pursuant to an operating agreement.

14 (3) (A) Except as provided in subparagraph (B), all revenues  
15 that the qualified nonprofit organization receives from a unit shall  
16 be expended only for the care, maintenance, operation,  
17 administration, improvement, or development of the unit. The  
18 qualified nonprofit organization may additionally contribute in-kind  
19 services and funds raised from outside entities for the care,  
20 maintenance, operation, administration, improvement, or  
21 development of the unit.

22 (B) If the qualified nonprofit organization determines that the  
23 revenues it has received from a unit are in excess of the revenues  
24 that are needed for the care, maintenance, operation, administration,  
25 improvement, or development of that unit, and that these funds  
26 are not already specified for or committed to specific purposes  
27 pursuant to an existing agreement or contract restricting the use  
28 of those funds, the qualified nonprofit organization may dedicate  
29 those excess revenues to another state park unit for that unit's care,  
30 maintenance, operation, administration, improvement, or  
31 development.

32 (4) General Fund moneys shall not be provided to a nonprofit  
33 organization to subsidize the operation or maintenance of a park  
34 unit. This paragraph applies to state parks, the full operation of  
35 which are turned over to a nonprofit organization, but does not  
36 apply to or preclude the department from entering into agreements  
37 with nonprofit organizations to operate a portion of a state park  
38 unit, or from entering into comanagement agreements with  
39 nonprofit organizations that involve the sharing of operational and  
40 financial responsibilities for the park unit and that have the effect



1 of reducing state costs. This paragraph does not apply to park  
2 entrance fees, concession revenues, or any other revenues generated  
3 within a park operated by a nonprofit organization pursuant to this  
4 section.

5 (b) An operating agreement entered into pursuant to subdivision  
6 (a) shall honor the existing term of a current concession contract  
7 for the state park unit subject to the operating agreement.

8 (c) An operating agreement entered into pursuant to subdivision  
9 (a) shall specify the duties that the nonprofit organization shall be  
10 responsible for carrying out relative to management and protection  
11 of natural, historical, and cultural resources, and shall identify  
12 those management duties that shall continue to be conducted by  
13 the department, so that all core operations of the park are  
14 delineated. Scientific, architectural, and engineering functions that  
15 require special expertise or professional training shall only be  
16 conducted by or under the supervision of qualified persons with  
17 applicable expertise or training and subject to oversight by the  
18 department.

19 (d) This section does not supersede the requirements of Section  
20 5019.53 regarding the protection of natural, scenic, cultural, and  
21 ecological values.

22 (e) The nonprofit organization and the district superintendent  
23 for the department shall, following submittal of the annual report  
24 pursuant to subdivision (a), hold a joint public meeting for  
25 discussion of the report.

26 (f) If the department intends to enter into an operating agreement  
27 for the development, improvement, restoration, care, maintenance,  
28 administration, or operation of a unit or units, or a portion of a  
29 unit, the department shall notify the Member of the Legislature in  
30 whose district the unit is located, the Chair of the Senate Committee  
31 on Natural Resources and Water, the Chair of the Assembly  
32 Committee on Water, Parks and Wildlife, and the chairs of the  
33 Assembly and Senate budget committees of that intention. The  
34 notification shall include estimated operating costs and revenues  
35 and core duties and responsibilities that are likely to be assigned  
36 to the nonprofit organization and the department.

37 (g) For purposes of this section, a qualified nonprofit  
38 organization is an organization that is all of the following:

39 (1) An organization that is exempt from taxation pursuant to  
40 Section 501(c)(3) of the Internal Revenue Code.

1 (2) An organization that has as its principal purpose and activity  
2 to provide visitor services in state parks, facilitate public access  
3 to park resources, improve park facilities, provide interpretive and  
4 educational services, or provide direct protection or stewardship  
5 of natural, cultural, or historical lands, or resources.

6 (3) An organization that is in compliance with the Supervision  
7 of Trustees and Fundraisers for Charitable Purposes Act, Article  
8 7 (commencing with Section 12580) of Chapter 6 of Part 2 of  
9 Division 3 of Title 2 of the Government Code.

10 (h) (1) Notwithstanding Section 10231.5 of the Government  
11 Code, the department shall provide a report to the Legislature, on  
12 a biennial basis, of the status of operating agreements it has entered  
13 into pursuant to this section. The report shall include a list of units  
14 of the state park system with operating agreements, discussion of  
15 the management and operations of each unit subject to an operating  
16 agreement, an accounting of the revenues and expenditures incurred  
17 under each operating agreement, and an assessment of the benefit  
18 to the state from operating agreements entered into pursuant to  
19 this section.

20 (2) A report submitted pursuant to paragraph (1) shall be  
21 submitted in compliance with Section 9795 of the Government  
22 Code.

23 (i) This section shall remain in effect only until January 1, 2019,  
24 and as of that date is repealed, unless a later enacted statute, that  
25 is enacted before January 1, 2019, deletes or extends that date.